

ADVISORY OPINION NO. 96-44

**Issued on September 5, 1996 by the
WEST VIRGINIA ETHICS COMMISSION**

PUBLIC SERVANT SEEKING OPINION

County School Superintendent

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if an athletic booster organization makes a purchase from a school board member?

FACTS RELIED UPON BY THE COMMISSION

An athletic booster organization for a county school wants to use its funds to purchase a shell building that would be used to store football equipment. The building would allow the team to practice at the school field which lacks a storage facility.

A local company, owned by a member of the board of education, is willing to sell the boosters a shell building for \$1500 payable in three annual payments of \$500. This price will include installation on the site. The cost of purchasing the building elsewhere would be approximately \$2800, not including installation costs.

No board member has had any involvement in planning for or purchasing this building. The purchase by the boosters organization would be made from funds raised directly by that organization and would not involve the use of any funds controlled by the school board. The only action of the Board of Education regarding this purchase by the Boosters organization would be to approve the placement of the building on school property.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

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West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract.

Several factors persuade the Commission that the school board member does not have the voice, influence or control over this purchase contract contemplated by WV Code 61-10-15. First, the decision to make the purchase is solely within the discretion of the boosters organization. Second, there is no evidence of any attempt by the school board member to initiate the decision to purchase the building. Finally, the payment for the purchase will be made by the athletic boosters organization with its own funds which are not provided by, or subject to the control of, the board or any member of the central administrative office.

The Commission finds that the fact the school board must formally approve accepting the building for use at the school does not give the board member voice, influence or control over the booster organization's contract to purchase the building as those terms are used in WV Code 61-10-15. This case is most similar to A.O. 96-12 which held that hiring a school board member to referee athletic events did not violate WV Code 61-10-15.

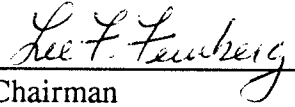
Therefore it would not violate WV Code 61-10-15 if the school athletic booster organization, on its own initiative, purchased a shell building from a school board member.

Public Contract

Pursuant to WV Code 6B-2-5(d)(1), no public servant or member of his immediate family may be a party to or have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control.

In this case the school board member has no official authority to enter into the contract because the board is not a party to the contract. Rather, it is a contract between his private business and the athletic boosters organization. The mere fact that the school board must formally accept the building for use at the school does not give the board "control" over the purchase contract. That action is more like the acceptance of a gift to the school board than taking an active role in monitoring the execution of a contract.

Therefore, under the facts presented, it would not be a violation of WV Code 6B-2-5(d) if a school board member voted to accept the gift of a building from a school athletic booster organization


Chairman